Barnabo Steel Corporation d/b/a Galvanizers *and* Local 299, International Brotherhood of Teamsters, AFL–CIO. Case 7–CA–33224

September 24, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon a charge filed by Local 299, International Brotherhood of Teamsters, AFL–CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint on June 12, 1992, against Barnabo Steel Corporation d/b/a Galvanizers, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.[1]

On August 21, 1992, the General Counsel filed a Motion for Summary Judgment. On August 25, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 2, 1992, notified the Respondent that unless an answer was received by July 16, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Redford, Michigan, has been engaged in the operation of a metal galvanizing facility. During the calendar year ending December 31, 1991, the Respondent derived gross revenues in excess of $500,000. During the calendar year ending December 31, 1991, the Respondent provided services valued in excess of $50,000 to Detroit Edison Company, an enterprise located within the State of Michigan. During the calendar year ending December 31, 1991, Detroit Edison Company, a public utility, derived gross revenues in excess of $250,000 and purchased from points located outside the State of Michigan and caused to be shipped directly to its Michigan facilities goods and materials valued in excess of $50,000. During the calendar year ending December 31, 1991, the Respondent provided services valued in excess of $50,000 to enterprises located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All warehousemen, hi-lo drivers, head kettlemen, acid men, truck drivers, receiving clerks and kettlemen helpers employed by the Respondent; but excluding all other employees.

At all times material, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the above unit and has been recognized as such by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from May 1, 1989, to May 1, 1993. At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for purposes of collective bargaining with regard to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about April 30, 1992, the Respondent ceased operations at its Redford, Michigan facility and discharged all employees employed by the Respondent in the bargaining unit represented by the Union. The Respondent ceased operations without prior notice to the Union and without affording the Union a meaningful

[1] The copy of the complaint that was sent to the Respondent by certified mail was returned to the Regional Office marked "Refused." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

opportunity to negotiate and bargain as the exclusive representative of the employees in the unit with respect to the effects of the cessation of the Respondent's Redford operations at a time when such bargaining could have been meaningful.

CONCLUSION OF LAW

By ceasing its operations and discharging its employees without prior notice to the Union and without affording the Union a meaningful opportunity to negotiate and bargain with respect to the effects of the cessation of operations, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of cessation of operations of its Redford, Michigan facility, we shall order it to bargain with the Union, on request, concerning the effects of that decision. Because of the Respondent's unlawful failure to bargain with the Union about the effects of the decision to terminate its Redford, Michigan operations, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practice committed.

Accordingly, we deem it necessary in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to require not only that the Respondent bargain with the Union, on request, about the effects of the closure, but we shall also accompany our order with a limited backpay requirement designed both to make the employees whole for losses as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

The Respondent shall pay unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) The date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on unit employees of cessation of operations at the Redford facility; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith.

In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Barnabo Steel Corporation d/b/a Galvanizers, Redford, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 299, International Brotherhood of Teamsters, AFL–CIO, as the exclusive bargaining representative of the employees in the following unit which is appropriate for purposes of collective bargaining:

> All warehousemen, hi-lo drivers, head kettlemen, acid men, truck drivers, receiving clerks and kettlemen helpers employed by the Respondent; but excluding all other employees.

(b) Ceasing its operations at its Redford, Michigan facility and discharging all employees employed in the bargaining unit represented by the Union without prior notice to the Union and without having afforded the Union a meaningful opportunity to negotiate and bargain as the exclusive representative of the unit employees with respect to the effects of the cessation of operations at a time when such bargaining could have been meaningful.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union with respect to the effects of the cessation of operations of the Respondent's Redford, Michigan facility.

(b) Pay the employees in the unit their normal wages for the period set forth in the remedy section of this decision.

(c) Preserve, and on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Mail to all unit employees, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Local 299, International Brotherhood of Teamsters, AFL–CIO, as the exclusive bargaining representative of the employees in the following unit which is appropriate for purposes of collective bargaining:

> All warehousemen, hi-lo drivers, head kettlemen, acid men, truck drivers, receiving clerks and kettlemen helpers employed by us; but excluding all other employees.

WE WILL NOT cease our operations at our Redford, Michigan facility and discharge our employees employed in the bargaining unit represented by the Union without prior notice to the Union and without having afforded the Union a meaningful opportunity to negotiate and bargain as the exclusive representative of the unit employees with respect to the effects of the cessation of operations at a time when such bargaining could have been meaningful.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay our unit employees who were employed at the Redford, Michigan facility at the time of our cessation of operations their normal wages for a period required by the decision of the National Labor Relations Board.

WE WILL, on request, meet and bargain with the Union about the effects on bargaining unit employees of our cessation of operations at our Redford, Michigan facility.

BARNABO STEEL CORPORATION D/B/A
GALVANIZERS